

2014 Legislative Spotlight: Electronic Cigarettes **E-Liquids and Child-Resistant Packaging**

On May 21, 2014, Governor Mark Dayton signed into law [new legislation](#) to address “electronic delivery devices” – products more commonly known as electronic cigarettes or e-cigarettes.

Electronic cigarettes are battery-powered devices, often resembling cigarettes, cigars, or pipes, designed to deliver nicotine or other substances to users in the form of an inhaled aerosol or vapor. Once primarily sold through the Internet or at mall kiosks, electronic cigarettes are now widely available in convenience stores, gas stations, tobacco stores and increasingly, at stand-alone, exclusive e-cigarette shops. Many public health advocates support the regulation of electronic cigarettes to reduce youth initiation to nicotine and tobacco products, protect the health of their users, and to promote the enforcement of smoke-free laws.

Included within the new legislation are a number of provisions that impact the retail sale of electronic cigarettes. Existing retail tobacco regulations were, for the most part, amended and/or expanded to address the sale of electronic cigarettes. One new provision, however, is specific to this type of product:



461.20 SALE OF ELECTRONIC DELIVERY DEVICE; PACKAGING.

(a) For purposes of this section, "child-resistant packaging" is defined as set forth in [Code of Federal Regulations, title 16, section 1700.15 \(b\)\(1\)](#), as in effect on January 1, 2015, when tested in accordance with the method described in [Code of Federal Regulations, title 16, section 1700.20](#), as in effect on January 1, 2015.

(b) The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, as defined in [section 609.685, subdivision 1](#), that is not contained in packaging that is child-resistant, is prohibited. All licensees under this chapter must ensure that any liquid intended for human consumption and use in an electronic delivery device is sold in child-resistant packaging.

(c) A licensee that fails to comply with this section is subject to administrative penalties under [section 461.12, subdivision 2](#).

An important regulation – one of the first of its kind in the United States. But, one that also raises a number of questions.

BACKGROUND

What is an electronic delivery device?

Electronic cigarettes are sold under a variety of different names, in a wide array of shapes and sizes, containing a variety of different ingredients. They are called electronic nicotine delivery systems (ENDS), personal vaporizers (PVs), electronic smoking devices, vapor products, and alternative nicotine delivery devices. Some resemble cigarettes, cigars, or pipes. Others mimic common household items, such as flash drives, pens, or lipstick cases. While most contain nicotine, some are marketed as nicotine-free.

“Electronic delivery device” is the broad, all-encompassing term used in Minnesota law to cover **any** type of device, regardless of its name, shape, or contents.

What does “child-resistant packaging” mean?

Child-resistant (or “special”) packaging is designed or constructed to be:

- Significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained inside within a reasonable time; and
- Not difficult for normal adults to use properly.

This is often accomplished through the use of a special cap.

Does “child-resistant” and “childproof” mean the same thing?

No, child-resistant does not mean childproof. While child-resistant packaging must be “significantly difficult” for a child under five years old to open, some children will be able to open the packaging within a “reasonable” amount of time.



Why require that the liquids sold for use in electronic delivery devices must in child-resistant packaging?

These liquids (commonly known as “e-liquid,” “juice,” or “e-juice”) are available in a wide variety of flavors (such as cherry, bubble gum, and gummy bear) that appeal to young children. Most contain nicotine, which, depending on the concentration, can be extremely dangerous. Exposure to nicotine (either by swallowing or through direct contact with the skin) can result in serious illness – even death. Requiring e-liquids to be sold in child-resistant packaging is one way to help reduce the incidence of liquid nicotine poison, particularly among younger children.

How is child-resistant packaging tested?

Children between the ages of 42 and 51 months are given five minutes to open an empty package. If unsuccessful, they are given an additional five minutes after a demonstration on how to open the package. If the child is successful (before or after the demonstration), that child’s test is counted as a failure. Adults between 50 and 70 years old will also test the packaging. At least 85 percent of the children tested must be unable to open it before the demonstration, at least 80 percent afterward (90 percent of the adults tested must be able open and properly close the package). Additional testing (up to 200 children) may be conducted when the results are inconclusive.

Those results (as well as a description of the testing process) are documented in the **full protocol testing laboratory report**.

COMPLIANCE AND ENFORCEMENT

Who is responsible for enforcing the child-resistant packaging requirement?

Minnesota cities and counties. Many of the provisions in our state statutes are enforced locally. Cities and towns can choose to license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products. Counties are required to license *unless* a city or town within that county does so on its own.

How will a city or county know if the bottles of e-liquid (or other packaging used) are child-resistant?

They can request a copy of testing report from the licensee. City or county staff will likely be unable to determine whether the bottles, vials, or other type of packaging used to sell e-liquid underwent (as well as passed) the testing requirement through visual or physical inspections. Retailers can request a copy of this report from the manufacturer or supplier of the packaging they are using and/or the products they are selling.

Cities and counties should inform their retail licensees that they will need to provide this documentation upon request.

How can a retailer find child-resistant packaging or a company that can test their products?

There are a number of manufacturers who offer a wide array of products that have been tested and meet these child-resistant requirements. The United States Consumer Products Safety Commission (CPSC) [Guide to Child Resistant and Senior-Friendly Packages](#) provides an overview of child-resistant packaging, the different types that are available, as well as a list of companies that manufacture and test child-resistant packaging.

Note: CPSC does not approve, certify, or endorse any specific type of packaging.

What will happen to retailers who violate the child-resistant packaging requirement?

They will be subject to the administrative penalties found in the city or county's licensing ordinance (as well as in state law), with increased fines and the possibility of license suspensions or revocations for repeat violations.

When does this packaging requirement go into effect?

January 1, 2015.

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